

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 14, 2005

IN RE:	)	
	)	
PETITION OF ATMOS ENERGY CORPORATION	)	DOCKET NO.
FOR APPROVAL OF FRANCHISE AGREEMENT	)	04-00318
WITH COLUMBIA, TENNESSEE	)	

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ORDER APPROVING PETITION OF ATMOS ENERGY CORPORATION  
FOR APPROVAL OF FRANCHISE AGREEMENT WITH COLUMBIA,  
TENNESSEE, PURSUANT TO TENN. CODE ANN. § 65-4-107

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This matter came before Chairman Pat Miller, Director Deborah Taylor Tate and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on February 28, 2005 for consideration of the *Petition of Atmos Energy Corporation for Approval of Franchise Agreement with Columbia, Tennessee* (the "*Petition*") filed on September 28, 2004.

**Petition**

In its *Petition*, Atmos Energy Corporation ("Atmos" or the "Company") requests Authority approval, pursuant to Tenn. Code Ann. § 65-4-107 (2004), of a franchise agreement contained in a Columbia, Tennessee ordinance entered by the city of Columbia, Tennessee on May 20, 2004 and accepted by Atmos on July 19, 2004. As stated in the *Petition*, the ordinance grants to Atmos the nonexclusive right to provide natural gas service in Columbia, Tennessee for a term of ten years. A copy of the ordinance is attached hereto as Exhibit 1. No person sought intervention in this matter.

A Notice of Hearing was issued on December 30, 2004, scheduling a Hearing on the merits of the *Petition* of Atmos for January 31, 2005. On January 12, 2005, Atmos filed a motion requesting additional time to file direct testimony and to reschedule the hearing. Pursuant to a Re-Notice of Hearing issued on February 1, 2005, a Hearing on the merits of the *Petition* of Atmos was held on February 28, 2005. The Company was represented by the following counsel:

**Misty Smith Kelley, Esq.;** Baker, Donelson, Bearman & Caldwell, 1800 Republic Center, 633 Chestnut Street, Chattanooga, Tennessee 37450.

### **Requirement of and Standards for Authority Approval**

Tenn. Code Ann. § 65-4-107 (2004) provides that no grant of a privilege or franchise from the State or a political subdivision of the State to a public utility shall be valid until approved by the Authority. Approval pursuant to Tenn. Code Ann. § 65-4-107 (2004) requires a determination by the Authority, after hearing, that “such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest.”<sup>1</sup> Tenn. Code Ann. § 65-4-107 (2004) further provides that in considering such privilege or franchise, the Authority “shall have the power, if it so approves, to impose conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require.”<sup>2</sup>

### **Pre-filed Testimony of Wade Turner**

On February 14, 2005, Atmos filed the Direct Testimony of Wade Turner, Operations Supervisor for Atmos, Columbia, Tennessee. Mr. Turner stated that the natural gas distribution system of Atmos in Columbia contains approximately 365 miles of pipe and is

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<sup>1</sup> Tenn Code Ann § 65-4-107 (2004)

<sup>2</sup> *Id*

interconnected with and dependent upon the distribution system located within the city limits of Columbia. Atmos serves approximately 11,537 customers in Columbia, of whom approximately 88% are residential and 12% are commercial and industrial. The majority of the pipeline in Atmos's distribution system is located within the public rights-of-way. Mr. Turner stated that without access to these public rights-of-way, Atmos could not adequately operate, maintain, or replace its distribution system.

According to Mr. Turner, Atmos has operated for a number of years in Columbia. In April of 2004, Atmos entered into negotiations with the City for a new agreement. Mr. Turner and Mike Miller, Columbia City Manager, engaged in substantive negotiations regarding the terms of the new agreement and both sides worked cooperatively to reach a common ground. Once they reached an agreement the Columbia City Council adopted the terms of the franchise.

#### **Testimony at the February 28, 2005 Hearing**

At the February 28, 2005 Hearing, Mr. Turner adopted his pre-filed testimony filed on February 14, 2005.

#### **Findings and Conclusions**

Atmos' franchise agreement with Columbia continues a longstanding franchise arrangement in a community where Atmos has extensive operations that rely on use of the public rights-of-way. This franchise arrangement, which was undisputed, has been and continues to be of mutual benefit to Atmos, its customers, and the community. The panel finds that this agreement is in the public interest. Accordingly, the Columbia agreement is approved pursuant to Tenn. Code Ann. § 65-4-107 (2004).

**IT IS THEREFORE ORDERED THAT:**

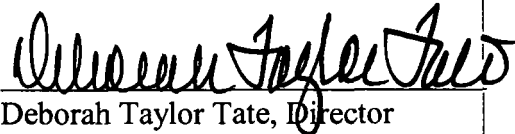
1. The proposed franchise agreement between Atmos Energy Corporation and Columbia, Tennessee is approved.

2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration within fifteen (15) days of the date of this Order; and

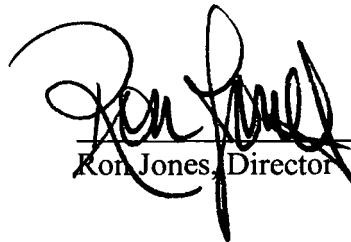
3. Any party aggrieved by the Authority's action embodied herein may file a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.



Pat Miller, Chairman



Deborah Taylor Tate, Director



Ron Jones, Director

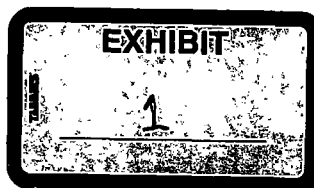
**AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO PROVIDE THE CITY OF COLUMBIA, TENNESSEE, WITH NATURAL GAS SERVICE, AND THE RIGHT TO CONSTRUCT, MAINTAIN, AND OPERATE A SYSTEM OF GAS MAINS AND SERVICE PIPES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING GAS IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND OTHER PUBLIC GROUNDS OF THE CITY OF COLUMBIA, TENNESSEE.**

WHEREAS, the City Council is authorized to enter into franchise agreements with providers of natural gas and other utilities, and

WHEREAS, it is in the best interest of the City of Columbia and its residents to enter into such a franchise agreement;

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF COLUMBIA, as follows:

**SECTION 1.** There is hereby granted to Atmos Energy Corporation, a corporation organized and existing under the laws of the State of Texas, and the Commonwealth of Virginia, its successors and assigns (hereinafter for convenience referred to as "Company"), the right, authority, privilege and franchise to serve the City of Columbia (hereinafter for convenience referred to as "Municipality"), and in the providing of such natural gas service to construct, maintain and operate a system of gas mains, service pipes, regulator stations and all other necessary and appropriate equipment and facilities for the distribution of gas, in, upon, under, along, across and over the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds in the present or future corporate limits of the Municipality, for the supplying and selling of gas and its by-products to said Municipality and the inhabitants, institutions and businesses thereof, and for such purposes to construct, lay down, maintain, and operate all necessary gas mains, service pipes and other appliances, fixtures and facilities as may be necessary for the transmission, distribution and sale of such to said Municipality and the inhabitants thereof for domestic, commercial, industrial and institutional uses, and other purposes for which it is or may hereafter be used, for a period of ten (10) years from and after the passage and approval of this Ordinance.



**SECTION II:** As consideration for the grant of the franchise and rights herein and for the use by Company of the streets, roads, highways, alleys, public ways and other real property owned or controlled by the Municipality, Company shall pay to Municipality semi-annually, on or before January 31<sup>st</sup> and July 31<sup>st</sup> of each year during the term hereof, a franchise fee equal to five percent (5%) of Company's gross receipts derived from the sale and distribution by Company of natural gas within the city limits of the Municipality during the preceding calendar year.

The Municipality shall have access at all reasonable times, upon reasonable advance notice, to the relevant books of the Company for the purpose of ascertaining the amount of franchise fee due the Municipality. The Company shall furnish (not more than once each year) to the Municipality a report showing the amount of gross revenues from Company's sale of gas within the Municipality annually.

The franchise fee provided herein, together with any and all charges of the Municipality for water, sewage and garbage services provided by the Municipality to Company, any and all sales taxes collected by Company, and any and all ad valorem taxes assessed by the Municipality against Company's property, shall constitute the only amounts for which Company shall be obligated to pay to the Municipality and shall be in lieu of any and all other costs, levies, assessments, fees or other amounts, of any kind whatsoever, that the Municipality, currently or in the future, may charge Company or assess against Company's property.

**SECTION III.** All gas mains, service pipes, fixtures, facilities and other appliances so laid, constructed and maintained by virtue of this Ordinance, shall be so laid, constructed and maintained in accordance with all applicable engineering codes adopted or approved by the natural gas distribution industry and/or engineering profession and in accordance with any applicable Statutes of the State of Tennessee and the Rules and Regulations of the Tennessee Regulatory Authority or of any other governmental regulatory commission, board or agency having jurisdiction over the Company. Said facilities shall be constructed as not to interfere with the drainage of said Municipality or unreasonably interfere with or injure any sewer or any other improvement which said Municipality has heretofore made or may hereafter make in, upon or along any highway, street, avenue, road, alley, lane, way, utility easement,

parkway, or other public ground, or unnecessarily impede or obstruct such highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds of said Municipality, and shall conform to the grade as then or hereafter established. The Company agrees to attempt to utilize known right-of-way whenever practical before resorting to right of condemnation to which the Company may be entitled to utilize by law.

**SECTION IV.** When the streets, avenues, alleys and other public ways are opened, or any other opening is made by the Company within the Municipality, whether the same be made for the purpose of laying, constructing, replacing or repairing the mains, pipes and other appliances and fixtures of the Company, the Company shall place and maintain necessary safety devices, barriers, lights and warnings to properly notify persons of any dangers resulting from such entrances, and shall comply with applicable safety regulations required by federal, state and local laws.

**SECTION V.** In the event it becomes necessary or expedient for the Municipality to change the course or grade of any highway, street, avenue, road, alley, way, parkway, or other public ground in which the Company is maintaining gas mains, pipes or other appliances and fixtures, then, upon the written request of the Municipality, the Company will remove or change the location or depth of such mains, pipes or other appliances and fixtures, as necessary to conform to the proposed street alteration.

**SECTION VI.** Whenever the Company wishes to enter upon any highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other public ground for the purpose of constructing, replacing or repairing any gas mains, pipes, or other appliances, it will, if the Municipality desires, notify the Municipality and file a plan or map of the proposed work, if practicable, before commencing same. Whenever any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public way shall be entered, dug up or disturbed by the Company, the Company shall, at its expense and as soon as possible after the work is completed, restore such highway, street, avenue, road, alley, lane, way, utility easement, parkway, or other public ground in as good condition as existed before the work was done and to the reasonable satisfaction of the Municipality. In the event the Company shall fail to fulfill its obligations under this Section, the Municipality, after giving the Company reasonable

**ORDINANCE NO.: 3551**

written notice, and failure of the Company to make such repairs or restoration, may make the necessary restoration or repairs itself and the Company shall be liable for the cost of same.

The provisions of this Section shall not be applied or interpreted in such a way as to prevent or delay Company work that may be required as a result of any emergency, leak or other immediate hazard or danger. Likewise, the provisions of this Section anticipate that the Company shall not be unreasonably denied permission to perform necessary work.

**SECTION VII.** The Company shall at all times indemnify and hold harmless the Municipality from and against any and all lawful claims for injury to any person or property by reason of the Company or its employees' failure to exercise due care and diligence in and about the installing and maintenance of said system, guarding trenches and excavation while said system is being installed or subsequent extensions, repairs or alterations are being made or generally in the operation and maintenance of said system, provided the Company shall have been notified in writing of any claim against the Municipality on account thereof, and shall have been afforded the opportunity fully to defend the same.

**SECTION VIII.** The Municipality and the Company hereby agree that this Ordinance shall from time to time be subject to rules and regulations adopted by the Company and approved by the Tennessee Regulatory Authority or any other regulatory body having jurisdiction thereof during the term of this Ordinance, and shall also be subject to all Rules and Regulations adopted and approved by the Tennessee Regulatory Authority or any other regulatory body and that all such Rules and Regulations shall be and become a part of this Ordinance to the same extent and with the same effect as if said Rules and Regulations were herein set out in full. The Company shall not be obligated or required to make any extension of distribution mains or service lines except in accordance with the provisions relating thereto adopted or approved by the Tennessee Regulatory Authority, or any other regulatory body having jurisdiction thereof during the term of this Ordinance.

**SECTION IX.** Nothing herein contained shall be construed as preventing the Company from installing, placing, replacing, taking up, repairing or removing gas pipes,



**ORDINANCE NO.: 3551**

mains, service pipes or other devices for furnishing gas services, from using any easements for gas service which are shown on any plats of any portion of said Municipality heretofore or hereafter platted or recorded or any such easement which may hereafter be created, granted or dedicated for any such utility purposes by any person, firm or corporation whatsoever.

**SECTION X.** If any section, or portion of any section, of this Ordinance shall hereafter be declared or determined by any court of competent authority to be invalid, the Company and the Municipality at their election may ratify or confirm the remaining portions of this Ordinance, and upon such ratification or confirmation the remaining portions of this Ordinance shall remain in full force and effect.

**SECTION XI.** The Company shall, within sixty (60) days after the passage of the Ordinance, file with the City Recorder or other appropriate official of the Municipality its unconditional acceptance, signed by its President, of the terms and conditions of this Ordinance. After filing of such acceptance, this Ordinance shall constitute a contract between the parties thereto and shall, subject to the rights and powers vested in the Tennessee Regulatory Authority or such other regulatory body of the State of Tennessee as may hereafter succeed to the rights and powers of the Tennessee Regulatory Authority or as may exercise statutory jurisdiction of gas companies furnishing gas service in the State of Tennessee, be the measure of the rights, powers, obligations, privileges and liabilities of said Municipality and of said Company.

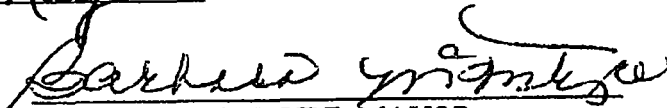
**SECTION XII.** All the privileges given and obligations created by this Ordinance shall be binding upon the successors and assigns of the Company.

**SECTION XIII.** This new Ordinance shall take effect sixty (60) days from the date of its passage on third (3<sup>rd</sup>) reading.

**SECTION XIV.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

ORDINANCE NO.: 3551

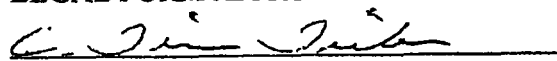
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF COLUMBIA,  
TENNESSEE, THIS 20 DAY OF May, 2004.

  
BARBARA MCINTYRE, MAYOR

ATTEST:

  
BETTY R. MODRALL, CITY RECORDER

LEGAL FORM APPROVED:

  
C. TIM TISHER, CITY ATTORNEY